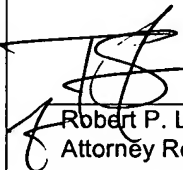11-02-06

TRANSMITTAL OF APPEAL BRIEF	Docket No. 03226/448001; SUN030086

In re Application of: Mihir Sambhus et al.

Application No. 10/622,047-Conf. #2269	Filing Date July 16, 2003	Examiner J. J. Debrow	Group Art Unit 2176

Invention: METHOD AND SYSTEM FOR CLIENT AWARE CONTENT AGGREGATION AND RENDERING IN A PORTAL SERVER

TO THE COMMISSIONER OF PATENTS:

Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal filed: September 1, 2006   .

The fee for filing this Appeal Brief is $ 500.00   .

[x] Large Entity   [ ] Small Entity

[ ] A petition for extension of time is also enclosed.

The fee for the extension of time is _____ .

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[x] Payment by credit card. Form PTO-2038 is attached.

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#45,079

Dated: November 1, 2006

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Effective on 12/08/2004.	**Complete if Known**	
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).	Application Number	10/622,047-Conf. #2269
# FEE TRANSMITTAL	Filing Date	July 16, 2003
	First Named Inventor	Mihir Sambhus
## For FY 2006	Examiner Name	J. J. Debrow
☐ Applicant claims small entity status. See 37 CFR 1.27	Art Unit	2176
TOTAL AMOUNT OF PAYMENT ($) 500.00	Attorney Docket No.	03226/448001; SUN030086

METHOD OF PAYMENT (check all that apply)

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☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

	FILING FEES		SEARCH FEES		EXAMINATION FEES		
Application Type	**Fee ($)**	**Small Entity Fee ($)**	**Fee ($)**	**Small Entity Fee ($)**	**Fee ($)**	**Small Entity Fee ($)**	**Fees Paid ($)**
Utility	300	150	500	250	200	100	_____
Design	200	100	100	50	130	65	_____
Plant	200	100	300	150	160	80	_____
Reissue	300	150	500	250	600	300	_____
Provisional	200	100	0	0	0	0	_____

2. EXCESS CLAIM FEES

Fee Description	Fee ($)	Small Entity Fee ($)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

Total Claims	Extra Claims	Fee ($)	Fee Paid ($)	Multiple Dependent Claims	
				Fee ($)	Fee Paid ($)
_____ - = _____ x _____ = _____				_____	_____

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee ($)	Fee Paid ($)
_____ - = _____ x _____ = _____			

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is $250 ($125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee ($)	Fee Paid ($)
_____ - 100 = _____	/50 _____	(round up to a whole number) x	_____ =	_____

4. OTHER FEE(S) Fees Paid ($)

Non-English Specification, $130 fee (no small entity discount)

Other (e.g., late filing surcharge): 1402 Filing a brief in support of an appeal _____ 500.00

SUBMITTED BY

Signature	#45,079	Registration No. (Attorney/Agent)	46,479	Telephone	(713) 228-8600
Name (Print/Type) Robert P. Lord THOMAS SCHERER				Date	November 1, 2006

Docket No.: 03226/448001; SUN030086
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Mihir Sambhus et al.

Conf. No.: 2269

Application No.: 10/622,047

Art Unit: 2176

Filed: July 16, 2003

Examiner: J. J. Debrow

For: METHOD AND SYSTEM FOR CLIENT
AWARE CONTENT AGGREGATION AND
RENDERING IN A PORTAL SERVER

MS Appeal Brief-Patents
Assistant Commissioner for Patent
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANT'S BRIEF UNDER 37 C.F.R. § 41.37

Dear Sir:

Pursuant to 37 C.F.R. § 41.37, please consider the following Appellant's Brief in the

referenced Application currently before the Board of Patent Appeals and Interferences.

11/03/2006 AWONDAF1 00000076 10622047
01 FC:1402   500.00 OP

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

I.   Real Party in Interest

The real party in interest for the referenced application is Sun Microsystems, Inc. ("Sun"). An Assignment transferring all interest in the referenced application from the inventors to Sun was filed with the USPTO on July 16, 2003. The Assignment is recorded at Reel 014311, Frame 0534.

II.   Related Appeals and Interferences

To the best of the knowledge of the Appellant and the Appellant's legal representative, there are no other appeals or interferences that will directly affect, be affected by, or have a bearing on the decision of the Board of Patent Appeals and Interferences ("the Board") in this appeal.

III.   Status of Claims

Application Serial No. 10/622,047 ("the '047 Application") was filed on July 16, 2003. As filed, the '047 Application included claims 1-29. In a response filed February 13, 2006, claims 1, 3-5, 6-8, 14-16, and 22-24 were amended. No additional claims have been subsequently cancelled or amended. Claims 1, 6, 14, and 22 are independent.

Claims 1-29 are currently pending in the '047 Application. All of the claims were finally rejected in a final Office Action dated May 1, 2006. A Notice of Appeal and Pre-Appeal Brief Request for Review were filed September 1, 2006. A Notice of Panel Decision from Pre-Appeal Brief Review was issued September 27, 2006, upholding the final rejection of claims 1-29.

IV.   Status of Amendments

No claims have been amended or cancelled since the final Office Action dated May 1, 2006.

V.   Summary of Claimed Subject Matter

Independent claim 1 relates to a method for providing client aware content aggregation and rendering in a portal server. The method involves: (i) receiving content from a plurality of channels, the plurality of channels comprising both rendering providers and non-rendering providers; (ii) aggregating the content from the plurality of channels using an aggregator, the aggregator configured to process the content using a first markup language; (iii) processing the aggregated content using a rendering engine, the rendering engine configured to output the aggregated content in a second markup language tailored for a client device; and (iv) outputting the aggregated content in the second markup language to the client device. The method recited in independent claim 1 is discussed in at least Figures 4 and 6, and paragraphs [0028]-[0029] and [0032] of the Specification.

Independent claim 6 relates to a method of processing a request for content from an access device. The method involves: (i) providing a first channel having content in a first markup language, wherein the first channel is a rendering provider; (ii) providing a second channel having content in the first markup language, wherein the second channel is a non-rendering provider; (iii) aggregating the first channel content with the second channel content to form a first document in the first markup language; and (iv) post-processing the first document to form a second document in a second markup language. The method recited in independent claim 6 is discussed in at least Figures 4 and 6, and paragraphs [0028]-[0029] and [0032] of the Specification.

Independent claim 14 relates to a computer system configured to execute software to process a request for content from an access device. The computer system includes: (i) a first channel having content in a first markup language, wherein the first channel is a rendering provider; (ii) a

second channel having content in the first markup language, wherein the second channel is a non-rendering provider; (iii) an aggregation of the first channel content with the second channel content to form a first document in the first markup language; and (iv) a post-processing of the first document to form a second document in a second markup language. The computer system recited in independent claim 14 is discussed in at least Figure 4 and paragraphs [0024], [0028]-[0029], and [0032] of the Specification.

Independent claim 22 relates to a machine readable medium having embodied thereon a computer program for processing by a machine. The computer program includes: (i) code for providing a first channel having content in a first markup language, wherein the first channel is a rendering provider; (ii) code for providing a second channel having content in the first markup language, wherein the second channel is a non-rendering provider; (iii) code for aggregating the first channel content with the second channel content to form a first document in the first markup language; and (iv) code for post-processing the first document to form a second document in a second markup language. The machine readable medium recited in independent claim 14 is discussed in at least Figure 4 and paragraphs [0024], [0028]-[0029], and [0032] of the Specification.

VI.   Grounds of Rejection to be Reviewed on Appeal

The sole ground of rejection to be reviewed is the rejection of claims 1-29 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication 2002/0107891 ("Leamon").

VII.　Argument

A.　Claims 1-29 are not anticipated by Leamon.

In this appeal, the Appellant argues that claims 1-29 are not anticipated by Leamon, for at least the reasons given below. For the purposes of this appeal, claims 1-29 stand or fall together. Claim 1 is representative of the group including claims 1-29.

Under 35 U.S.C. § 102(e), a claim in a patent application may be rejected if "the invention was described in (1) an application for patent, published under § 122(b), by another filed in the United States before the invention by the Appellant for patent...." Furthermore:

> Anticipation under 35 U.S.C. § 102 means lack of novelty, and is a question of fact. To anticipate, *every element and limitation* of the claimed invention must be found in a single prior art reference, arranged as in the claim.

Brown v. 3M, 265 F.3d 1349, 1351 (Fed. Cir. 2001) (emphasis added). The Federal Circuit has held repeatedly that anticipation requires disclosure of each and every element of the claimed invention in a single prior art reference. *See, e.g., Schering Corp. v. Geneva Pharms.*, 339 F.3d 1373, 1377 (Fed. Cir. 2003); *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 677 (Fed. Cir. 1988); *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1574 (Fed. Cir. 1986).

The Federal Circuit has also held that an element or limitation may be inherently, as well as expressly, described in the single prior art reference. *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). More specifically, "[u]nder the principles of inherency, if the prior art *necessarily* functions in

accordance with, or includes, the claimed limitations, it anticipates." *MEHL/Biophile Int'l Corp. v. Milgraum*, 192 F.3d 1362, 1365 (Fed. Cir. 1999) (emphasis added). Said another way:

> To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is *necessarily present* in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing *may* result from a given set of circumstances is not sufficient.'

In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted) (emphasis added).

B.   Leamon does not expressly or inherently disclose a non-rendering provider.

Independent claim 1 recites, in part, "receiving content from a plurality of channels, the plurality of channels comprising both *rendering providers* and *non-rendering providers.*" Thus, the claims clearly require receiving content from both a rendering provider *and a non-rendering provider*. A non-rendering provider is a provider of content that is *already in a device-specific format*, while a rendering provider is a provider of content that must first be rendered to the device-specific format. *See, e.g.,* Specification, paragraph [0028].

In the final Office Action dated May 1, 2006, the Examiner asserts that Leamon discloses "the rendering and non-rendering concept as described in the current invention." Office Action dated May 1, 2006, p. 3. To the contrary, while Leamon is admittedly directed to rendering content to be outputted to a client device, *none* of the content in Leamon is

initially received from a *non-rendering* provider, *i.e.,* in a device-specific format. Specifically, as described in Leamon:

> The request causes information to be accessed and transmitted by the application **50, 52** electronically *in a standard markup language*, shown as XHTML in **FIG. 2A**. Other *standard languages* may be employed.
>
> On its journey back to the client **40A**, the information encounters a *rendering engine* **60**.... The rendering engine **60** operates on the pre-formatted information by passing it through a format transformation process designed to *reformat the information into a display format compatible with the particular client* **40A** that requested the information.

Leamon, paragraphs [0019]-[0020] (emphasis added). Clearly, because *all* content in Leamon must be rendered to a device-specific format, *all* of the content providers in Leamon are, by definition, *rendering* providers. Accordingly, *none* of the content providers in Leamon are *non-rendering* providers as required by the claims. In fact, Leamon is completely silent with respect to *any* sort of non-rendering provider *whatsoever*.

Further, in the Advisory Action dated July 21, 2006, the Examiner submits that "it is inherent that a non-rendering process exist [in Leamon] in order to identify the specific device type" for which to customize content. Advisory Action dated July 21, 2006, p. 2. As an initial matter, the Examiner's argument is directed to a non-rendering *process*, not the non-rendering *provider* required by the claims. Nonetheless, identifying a specific device type clearly does not *necessarily* require a non-rendering provider. For example, in Leamon:

> The client **40A** originates a request **100** for information over the network. The request **100** is received at the rendering engine **60**. The rendering engine *identifies, in step **102**, the device that originated the request* by reading a code embedded in the request. The rendering engine **60** fetches, in step **104**, the content requested by the user message. The content is formatted in the

> *standard language....* In step **108**, the transformation on the standard format information is performed, *converting it into a format language compatible with the user device.*

Leamon, paragraph [0025]. The passage above clearly shows an example of identifying a device type when using a *rendering* provider, not a *non-rendering* provider. Thus, the cited reference itself shows that identifying a device type does not *necessarily* require the presence of a non-rendering provider. Accordingly, a non-rendering provider cannot be inherent in Leamon. *See In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

C. Leamon does not expressly or inherently disclose aggregating content from multiple channels.

Independent claim 1 recites, in part, "*aggregating* the content from the plurality of channels using an aggregator, the aggregator configured to process the content using a first markup language." Thus, the claims clearly require that content from multiple channels be aggregated. Specifically, aggregating involves combining rendered and non-rendered content together. *See, e.g.,* Specification, Fig. 4 and paragraph [0032].

In the final Office Action dated May 1, 2006, the Examiner asserts that Leamon discloses aggregating content from multiple channels. Specifically, the Examiner cites Figs. 2, 4-7, and paragraphs [0019]-[0021] and [0025]-[0029] of Leamon as disclosing aggregating content from multiple channels. *See* Office Action dated May 1, 2006, p. 3. To the contrary, while Leamon admittedly discloses multiple *alternative* sources of content, Leamon is completely silent with respect to *aggregating* (*i.e.,* combining) content from multiple

sources. For example, Fig. 2A and paragraph [0019] of Leamon, referenced by the Examiner, describe a system for processing a request for content as follows:

> The process comprises a request for information from client **40A** that is passed to *a source information provider*, which may be a proprietary application **50** *or* an independent application **52**.

(emphasis added). The passage above clearly shows that information is obtained from *a single* provider. Further, the conditional language ("or") employed by Leamon clearly indicates that a proprietary application and an independent application are *alternative* sources of information. In fact, a thorough reading of Leamon reveals that Leamon is completely silent with respect to aggregating content from multiple providers under *any* circumstances *whatsoever*.

Further, in the Advisory Action dated July 21, 2006, the Examiner submits that because the Aggregator described in the Specification is configured to forward content for rendering (*see* Specification, paragraph [0031]), aggregating is equivalent to rendering. On this basis, the Examiner essentially argues that formatting of content (*i.e.,* rendering) for a particular device, as disclosed by Leamon, is equivalent to the aggregating recited in the claims. *See* Advisory Action dated July 21, 2006, p. 2.

Words in a claim are generally given their ordinary and customary meaning, which is the meaning that the words would have to a person of ordinary skill in the art in question as of the effective filing date of the patent application. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13, 1321 (Fed. Cir. 2005) (en banc); *Vitronics Corp. v. Conceptronic, Inc.*, 90

F.3d 1576, 1582 (Fed. Cir. 1996). Thus, "the inquiry into how a person of ordinary skill in the art understands a claim term provides an objective baseline from which to begin claim interpretation." *Phillips*, 415 F.3d at 1313. Further, the words of the claim must be given their *plain meaning* unless the Applicant has provided a clear definition in the Specification. *See In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (emphasis added).

The plain meaning of the term "aggregate" is "to gather into a mass, sum, or whole." The American Heritage® Dictionary of the English Language: Fourth Edition, 2000, as cited at http://www.bartleby.com. Further, the Specification does not provide *any* alternative definition of the term "aggregating" *whatsoever*. As discussed above, aggregating involves *combining* rendered and non-rendered content together, *i.e.*, gathering content from multiple channels into a whole, which is entirely consistent with the plain meaning of the term "aggregate." *See, e.g.*, Specification, Fig. 4 and paragraph [0032]. Accordingly, during examination, the claims *must* be interpreted using the plain meaning of the term "aggregating." *See In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

Continuing with discussion of the Advisory Action dated July 21, 2006, the passage referenced by the Examiner merely describes one function of the Aggregator, and does not describe its *primary* function, namely, to *aggregate* content from multiple channels. *See, e.g.*, Specification, paragraph [0032]. As discussed above, the Examiner is required to interpret the claims using the *plain meaning* of the term "aggregating." Instead, the Examiner is using the Specification to infer a different definition of the term "aggregating,"

when no such definition has been expressly described in the Specification. Thus, while the Appellant acknowledges that the Examiner is required to give the claims their broadest *reasonable* interpretation, the Examiner is clearly ignoring the plain meaning of the term "aggregating," which is wholly improper. *See In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

D.   Summary

In view of the above, Leamon clearly does not expressly or inherently describe *each and every* element of independent claim 1. Independent claims 6, 14, and 22 include substantially the same elements discussed above. Claims 2-5, 7-13, 15-21, and 23-29 depend, directly or indirectly, from independent claims 1, 6, 14, and 22, respectively. Accordingly, Leamon also does not expressly or inherently describe each and every element of claims 2-29, for at least the same reasons.

VIII. Conclusion

As discussed above, Leamon does not expressly or inherently disclose *each and every* element of claims 1-29. Thus, for at least the reasons presented above, claims 1-29 of the '047 Application are allowable over the cited prior art. *See Brown*, 265 F.3d at 1351. Accordingly, the Appellant respectfully requests that the Board reverse the Examiner's rejections and allow claims 1-29 of the '047 Application.
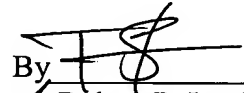
Please apply any charges not covered, or any credits, to Deposit Account 50-0591 (Reference No. 03226/448001).

Date: 11/1/06

Respectfully submitted,

By _____ #45,079

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Claims Appendix

1. (Previously Presented) A method for providing client aware content aggregation and rendering in a portal server, comprising:

>receiving content from a plurality of channels, the plurality of channels comprising both rendering providers and non-rendering providers;

>aggregating the content from the plurality of channels using an aggregator, the aggregator configured to process the content using a first markup language;

>processing the aggregated content using a rendering engine, the rendering engine configured to output the aggregated content in a second markup language tailored for a client device; and

>outputting the aggregated content in the second markup language to the client device.

2. (Original) The method of claim 1, wherein the first markup language is AML (abstract markup language).

3. (Previously Presented) The method of claim 1, wherein the second markup language is a device specific markup language in accordance with the requirements of the client device.

4. (Previously Presented) The method of claim 1, wherein the content received from a plurality of channels includes AML based pages.

5. (Previously Presented) The method of claim 1, wherein the content received from at least one of the plurality of channels includes content in the second markup language.

6. (Previously Presented) A method of processing a request for content from an access device, comprising:

    providing a first channel having content in a first markup language, wherein the first channel is a rendering provider;

    providing a second channel having content in the first markup language, wherein the second channel is a non-rendering provider;

    aggregating the first channel content with the second channel content to form a first document in the first markup language; and

    post-processing the first document to form a second document in a second markup language.

7. (Previously Presented) The method according to claim 6, wherein:

    the first channel is a rendering channel, and

    the second channel is a non-rendering channel.

8. (Previously Presented) The method according to claim 6, wherein:

    the second channel has content in the second markup language.

9. (Original) The method according to claim 8, wherein:

    the post-processing includes transforming a document from the first channel in a first markup language into a document returned to the first channel in the second markup language.

10. (Original) The method according to claim 3, wherein:

    the first markup language includes a generic type of markup language.

11. (Original) The method according to claim 10, wherein:

the generic type of markup language includes abstract markup language (AML).

12. (Original) The method according to claim 3, wherein:

the second markup language includes a device-specific markup language.

13. (Original) The method according to claim 3, wherein:

the post-processing includes using a rendering engine.

14. (Previously Presented) A computer system configured to execute software to process a request for content from an access device, comprising:

a first channel having content in a first markup language, wherein the first channel is a rendering provider;

a second channel having content in the first markup language, wherein the second channel is a non-rendering provider;

an aggregation of the first channel content with the second channel content to form a first document in the first markup language; and

a post-processing of the first document to form a second document in a second markup language.

15. (Previously Presented) The computer system according to claim 14, wherein:

the first channel is a rendering channel, and

the second channel is a non-rendering channel.

16. (Previously Presented) The computer system according to claim 14, wherein:

the second channel has content in the second markup language.

17. (Original) The computer system according to claim 16, wherein:

the post-processing includes transforming a document from the first channel in a first markup language into a document returned to the first channel in the second markup language.

18. (Original) The computer system according to claim 17, wherein:

the first markup language includes a generic type of markup language.

19. (Original) The computer system according to claim 18, wherein:

the generic type of markup language includes abstract markup language (AML).

20. (Original) The computer system according to claim 14, wherein:

the second markup language includes a device-specific markup language.

21. (Original) The computer system according to claim 14, wherein:

the post-processing includes using a rendering engine.

22. (Previously Presented) A machine readable medium having embodied thereon a computer program for processing by a machine, the computer program comprising:

code for providing a first channel having content in a first markup language, wherein the first channel is a rendering provider;

code for providing a second channel having content in the first markup language, wherein the

second channel is a non-rendering provider;

code for aggregating the first channel content with the second channel content to form a first

document in the first markup language; and

code for post-processing the first document to form a second document in a second markup

language.

23. (Previously Presented) The machine readable medium according to claim 22, wherein:

the first channel is a rendering channel, and

the second channel is a non-rendering channel.

24. (Previously Presented) The machine readable medium according to claim 22, wherein:

the second channel has content in the second markup language.

25. (Original) The machine readable medium according to claim 24, wherein:

the post-processing includes transforming a document from the first channel in a first markup

language into a document returned to the first channel in the second markup

language.

26. (Original) The machine readable medium according to claim 22, wherein:

the first markup language includes a generic type of markup language.

27. (Original) The machine readable medium according to claim 26, wherein:

the generic type of markup language includes abstract markup language (AML).

28. (Original) The machine readable medium according to claim 26, wherein:

    the second markup language includes a device-specific markup language.

29. (Original) The machine readable medium according to claim 22, wherein:

    the post-processing includes using a rendering engine.

Evidence Appendix

None.

Related Proceedings Appendix

Not applicable to the present appeal.

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        Appeal Brief (22 pages)
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